

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

## UNITED STATES DISTRICT COURT

for the

MIDDLE District of PENNSYLVANIACIVIL Division

Case No. \_\_\_\_\_

(to be filled in by the Clerk's Office)

ANTHONY LEE MACHICOTE

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

BARRY SMITH, <sup>-v-</sup> SUPT.  
BOBBY JO SALAMON, Deputy  
DAVID J. CLOSE, Deputy  
MENTAL HEALTH SUPERVISOR

DR. WALMER Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

FILED  
SCRANTON

JUL 30 2020

PER \_\_\_\_\_

DEPUTY CLERK

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS  
(Prisoner Complaint)

## NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

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**I. The Parties to This Complaint****A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Anthony Lee Machicote

All other names by which  
you have been known:

A.K.A. "REDS"

ID Number

GB-7521

Current Institution

SCI-HOUTZDALE

Address

209 INSTITUTE DR. P.O. BOX 1000HOUTZDALEPA16698-1000

City

State

Zip Code

**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

**Defendant No. 1**

Name

Barry SmithJob or Title (*if known*)Superintendent

Shield Number

Employer

Pennsylvania Department of Corrections

Address

SCI-HOUTZDALE P.O. BOX 1000HOUTZDALEPA16698-1000

City

State

Zip Code

☐ Individual capacity ☒ Official capacity

**Defendant No. 2**

Name

Bobby Jo SalamonJob or Title (*if known*)Deputy Superintendent for Facilities Management

Shield Number

Employer

Pennsylvania Department of Corrections

Address

209 Institute Dr. P.O. Box 1000HOUTZDALEPA16698-1000

City

State

Zip Code

☐ Individual capacity ☒ Official capacity

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## Defendant No. 3

Name

DAVID J. CLOSE

Job or Title (if known)

Deputy Superintendent for Centralized Services

Shield Number

Employer

Pennsylvania Department of Corrections

Address

209 Institute Dr. P.O. Box 1000

HOUTZDALE

PA

16698-1000

City

State

Zip Code

☐ Individual capacity ☒ Official capacity

## Defendant No. 4

Name

Dr. Walmer, MD

Job or Title (if known)

Mental Health Supervisor

Shield Number

Employer

Pennsylvania Department of Corrections

Address

209 Institute Dr. P.O. Box 1000

Houtzdale,

Pa.

16698-1000

City

State

Zip Code

☐ Individual capacity ☒ Official capacity

## II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐ Federal officials (a *Bivens* claim)☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

A violation of the Eighth Amendment of the U.S. Constitution pursuant to the "deliberate indifference" standard held by the Court in *Farmer vs. Brennan*, 511 US 825, 114 S.Ct. 1970(1994)

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

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- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

Prison staff has the duty to protect prisoners under their care and custody. They have safeguards in place in order to prevent assaults to occur, so each official is liable if they place a prisoner in harm way or in unsafe conditions that will cause harm to a prisoner.

### III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☒ Other (explain) sentence was vacated and is awaiting for re-sentence.

### IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

The incident took place in the dining hall #2 at SCI-Houtzdale.  
It was during break fast on the morning of 9-28-19.

Continuation of page 4 II D.

Inmates who have mental illness and are capable of attacking and assaulting other inmate and those who have a documentation of such behavior or tendencies, are often place in a separate block. At SCI-Houtzdale that block is B Block, and there is where they house these mental or unstable inmates, where they can be watched and controlled.

Inmates Barry Lewis was housed in my block JA, and he was very re-clused but also confrontational. The day of the incident was not the first time he had said something to me and it's possible that by me not answering him, he felt some kind of way and sucker-punched me. But I was not the first nor would be the last as long as he is housed with normal inmates and not placed where he suppose to be housed.

Every defendant mentioned are responsible for this incident because then allowed this inmates to live in housing units that do not correspond to this individual needs, and place all other inmates in harm way. They knew of his assaultive tendencies and they should've never allow this inmate to live near me or even to interact with me. The "risk factor" was evident and the records will show the other inmates this inmate Lewis had assaulted. The deliberate indifference is proven by their knowledge of his prior assaults and that they ignored their own policies and placement of mental illness patient to their own blocks and they knowingly place Barry Lewis on my pod unit putting me at risk and any other inmate living in JA.

In conclusion, Smith, Salamon, Close and the whole mental health staff did not perform according to their responsibility in my care and safety.

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C. What date and approximate time did the events giving rise to your claim(s) occur?

It was during the morning of 9-28-19 when breakfast was being served.

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

On 9-28-19 I was eating breakfast in dining hall #2, when inmate Barry Lewis approached the table I was seated, and asked if anyone wanted his coffee pack, to which everyone seated at the table responded "No!" Inmate Barry Lewis said "alright..cool!" As he said the words he punches me in the eye, I was knocked back and did not strike him or fought back, I could not see straight, vision was blurred. I was then escorted to medical by a C.O. where I was treated and photographed. Inmate Gregory mills KV-7901 was a witness to the incident.

#### V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

I sustained a blacken eye, it was my right eye that was injured and it was shut and swollen, as the photos will show, it is a standard procedure to take photos whenever there is a fighting incident, to make sure everything is on the incident report and there is also a video recording of the incident that will show all that occurred on that day.

#### VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I am suing for the amount of \$50,000 and whatever punitive damage reward the jury deem necessary. This should not had happen and it is very disturbing to be sucker-punched, I still have bad reaction when I'm around people, and come to find out this inmates has done this before to other inmates, he has an assaulted behavior and he is a mental case, he should not be allow around other inmates and this has given me problems, my vision is blurring at times and my mental stability is questionable. They all knew this inmate's assaultive tendencies, and they should not have him in regular population, they have a block for inmates like him, this could have been avoided.

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## VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

SCI-Houtzdale

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☒ No

☐ Do not know

If yes, which claim(s)?



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- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

SCI-Houtzdale

2. What did you claim in your grievance?

I told them what happen and what I wanted done. (See the attached copies of grievance and their response to my appeals - Exhibits a-f)

3. What was the result, if any?

See attached Exhibits a-f

Rejected

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

See attached Exhibits a-f

Appealed to Supt. and Central Office at Mechanicsburg



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F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

*(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)*

#### VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☐ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

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- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☐ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) \_\_\_\_\_

Defendant(s) \_\_\_\_\_

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. \_\_\_\_\_

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

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☐ Yes

☐ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) \_\_\_\_\_

Defendant(s) \_\_\_\_\_

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition \_\_\_\_\_

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

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**IX. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

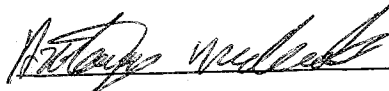
**A. For Parties Without an Attorney**

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:

7-6-20

Signature of Plaintiff



Printed Name of Plaintiff

ANTHONY LEE MACHICOTE

Prison Identification #

GB-7521

Prison Address

209 Institute Dr. P.O. Box 1000HoutzdalePa16698-1000

City

State

Zip Code

**B. For Attorneys**

Date of signing:

\_\_\_\_\_

Signature of Attorney

\_\_\_\_\_

Printed Name of Attorney

\_\_\_\_\_

Bar Number

\_\_\_\_\_

Name of Law Firm

\_\_\_\_\_

Address

\_\_\_\_\_

City

State

Zip Code

Telephone Number

\_\_\_\_\_

E-mail Address

\_\_\_\_\_

ANTHONY DEE MACHICOTE  
6B-7521 SCI-HOUTZDALE  
209 INSTITUTE DR.  
P.O. BOX 1000  
HOUTZDALE, PA. 16658-1000

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